Reg. No. GR/RNP/GOA/32

RNI No. GOAENG/2002/6410

Panaji, 9th January, 2008 (Pausa 19, 1929)

SERIES II No. 40

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

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Notification

No. 28/18/2007-LAB/769

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 25-6-2007 in reference No. IT/12/2003 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 30th July, 2007.

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IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before Shri Dilip K. Gaikwad, Presiding Officer)

Case. No. IT/12/2003

Workmen, represented by
Mumbai Mazdoor Sabha,
Kennedy House,
4th Floor, Goregaonkar Road,
Mumbai–400007. … Workman/Party I

V/s

1. M/s Ciba Specialty
Chemicals (India) Ltd.,
Santa Monica, Corlim,
Ilhas, Goa. 403 110. … Employer/Party II

2. M/s. Super Services,
Dr. A. D. Borkar Road,
Opp. Gas Service,
Panaji, Goa. … Employer/Party II(a)

Workmen/Party I - Represented by Adv. V. Menezes.

Employer/Party II - Represented by Adv. G. K. Sardessai.

Party II(a) - Represented by Adv. A. Nigalye.

AWARD

(Passed on this 25th day of June, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act, 1947).

1. A factual matrix giving rise to present reference, stated in brief, is as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947 has referred under order dated 7-3-2003 to this Tribunal following dispute for adjudication.

(I) Whether, on the ground that contract between M/s. Super Services and M/s. Ciba Specialty Chemicals (India) Ltd., is sham and bogus, the demand of Mumbai Mazdoor Sabha, on behalf of the two workmen, namely, Shri Gangappa Talwar and Shri Eknath R. Khandeparkar, for doing away with the existence of middle man as contractor and for regulation of their working conditions at par with the direct employees of the company is legal and justified ?

(II) If the answer to issue No. (1) above is in the affirmative then, to what relief, benefits and fitment in pay scale at M/s. Ciba Specialty Chemicals (India) Ltd., these workmen are entitled to and from what date, irrespective of their continuance in employment or not on the date of this reference and pending award on this reference ?

(III) If answer to issue No. (1) above is in the negative, then to what relief, if any, the workmen are entitled ?

2. In response to notices, both parties appeared in the Tribunal. Party I presented its claim statement on 22-8-2003 at Exb. 11. It appears from the claim statement that, the Party II is doing business of manufacturing dyes, pharmaceuticals, drugs, pesticides and chemicals in its factory situated at Corlim, Goa. It has employed about 70 workmen and management staff. Previously, there was a company by name M/s. Hindustan Ciba Geigy Ltd., which was doing the same business at the same place. The company had employed all workmen referred to above. The company is demerged into two companies by name (1) M/s. Syngenta India Ltd., and (2) M/s. Ciba Specialty Chemicals (India) Ltd., i.e. Party II. These two companies took over all liabilities including workmen of the company M/s. Hindustan Ciba Giegy Ltd. Out of the workmen who were engaged by M/s. Hindustan Ciba Giegy Ltd., for cleaning/sweeping work Gangappa Thalwar and Eknath Kadeparkar are allotted to the Party II (hereinafter in short referred to as "the said two workmen"). According to the Party I, considering nature of business which the Party II is doing, it is necessary for the Party II to maintain clean and dust-free environment. The work which was being done by the said two workmen is of perennial nature. They are in continuous service without break with the Party II right from their employment which was with original company M/s. Hindustan Ciba Giegy Limited. The Party II has shown the said two workmen as contract labour. Their employment was continued without break irrespective of change in contractors. There was direct supervision and control over their work by the Party II. They are persistently treated as contract labour doing cleaning work under contract entered into by Party II with the Party II(a) without granting status of permanency and continuity in service with a view to deny the benefits of the permanent employees. It is unfair labour practice adopted by Party-II. The contract entered into by the Party II with Party II(a) is sham and bogus. The said two workmen (Party I) were previously members of the Union Kamgar Sabha. Inspite of repeated demands by this union, neither the employer nor Government of Goa regularized services of the said two workmen (Party I) as permanent employees, with full consequential benefits. The Union Kamgar Sabha filed Writ Petition bearing No. 34/97 in the Hon'ble High Court of Bombay at Goa with prayer to regularize services of the said two workmen (Party I) as permanent employees of the Party II. The Hon'ble High Court by order dated 18-9-2002 dismissed the Writ Petition with directions to Government of Goa to consider demands of the union within two months of receipt of the application, and to the Tribunal to dispose off the reference within a year from receipt of the same, in the event if it is made. The Union Kamgar Sabha of which the said two workmen (Party I) were members is merged into the Mumbai Mazdoor Sabha on 16-12-1999. Since then, the Mumbai Mazdoor Sabha is representing the said two workmen (Party I). Pursuant to the direction given by the Hon'ble High Court of Bombay at Goa in Writ Petition bearing No. 34/97 the union Mumbai Mazdoor Sabha raised dispute on 1-10-2002 before Secretary, Department of Labour and Industries, Government of Goa, Panaji, Goa, stating that:

(a) the contract between M/s. Syngenta India Ltd., with M/s. Safe (X) Services on one hand, and M/s. Super Services on the other with regard to employment of gardeners and sweepers in the factory premises is sham and bogus contract;

(b) the contracts between M/s. Ciba Specialty Chemicals (India) Ltd., respectively with M/s. Safe (X) Services and M/s. Super Services with regard to employment of gardeners and sweepers in the factory premises are sham and bogus;

(c) the workmen employed as gardeners and sweepers are entitled to be absorbed as regular workmen of M/s. Syngenta India Ltd., i.e. Party II and of Ciba Specialty Chemicals (I) Ltd., w.e.f. 30-1-1997;

(d) the contract workmen engaged for gardening and sweeping work are even otherwise entitled to regularization due to long and continuous service and on perennial nature of work;

(e) action of the management of M/s. Syngenta India Limited and M/s. Ciba Specialty Chemicals (India) Ltd., in continuing to employ the workmen as contract workmen for doing the works of gardening and sweeping is unfair labour practice under item 10 of Fifth Schedule provided in the said Act, 1947. Management of M/s. Syngenta India Limited and of Ciba Specialty Chemicals (India) Limited should be directed to stop the contract and to absorb the contract workmen w.e.f. 30-1-1997 with all consequential benefits as regular workmen; and lastly,

(f) the workmen after regularization are entitled to fitment.

The contractor i.e. the Party II(a) illegally terminated services of the said two workmen (Party I) w.e.f. 31-12-2002. The termination is separately challenged which is pending in conciliation. The Government of Goa by order dated 7-3-2003 has referred to this Tribunal for adjudication the dispute as stated earlier. The Party I by presenting claim statement prayed for holding that the contracts between the Party II and Party II(a) is sham and bogus, that the act of the Party II in treating the said two workmen as contract

labour is an unfair labour practice, and for direction to the Party II to grant the said two workmen permanent status by regularizing/absorbing their services w.e.f. 30-1-1997 with consequential benefits and proper fitment.

3. The Party II by filing its written statement on 16-9-2003 at Exb. 12 registered the claim statement of the Party I. It appears from written statement that the said two workmen are not employees of the Party II. There is no relationship as employees and employer, and also Industrial Dispute between the two. The Party II entered into a contract in respect to cleaning/sweeping work with the contractor i.e Party II(a). Only some part of the day is sufficient for such work. There was control and supervision of the contractor over the cleaning/sweeping work done by the workmen. The work is not essential for running factory of the Party II. The contractor had covered the workmen under provisions of the Employees' State Insurance Act, Employees' Provident Funds Act, the Payment of Bonus Act and under Minimum Wages Act. The workmen were employees of the contractor. The contract entered into by Party II with the Party II(a) was genuine. The contract in dispute and services of the said two workmen are terminated by the contractor. There is no relationship of the employer and the employees between the contractor and the said two workmen. Question of treating the said two workmen on par of regular employees does not arise. There are 52 workmen employed by the Party II. The union Mumbai Mazdoor Sabha represents only one workman out of 52. It follows that the union is representing minority of the workmen. Therefore, this union is not competent to raise dispute on behalf of the said two workmen. Provisions of the Contract Labour (Regulation and Abolition) Act are applicable. On these and above grounds, the Party II entreated for dismissal of the reference with cost.

4. The Party II(a) presented its written statement on 16-9-2003 at Exb. 13 and thereby combated the statement of claim. At the very outset the Party II(a) challenged maintainability of the reference on grounds that, there is no Industrial Dispute between it and the Party II, that, there was no demand by the Party I either directly or through Conciliation Officer, that, the Mumbai Mazdoor Sabha has no locus standi to espouse dispute on behalf of the said two workmen and to represent them in reference, that there is no subsisting contract on the date of reference, and that, the Tribunal has no jurisdiction to entertain and to decide the reference.

5. Further, it appears from written statement (Exb. 13) that the Party II(a) is a professional contractor in cleaning work. The Party II(a) came to know in or about a year 1989 that the Party II is in need of contractor for doing such work. Therefore, the Party II(a) approached the Party II. After mutual discussions and negotiations a written contract in respect of cleaning work took place between the two. This contract came to be renewed from time to time on agreed terms and conditions. It was job contract and not a contract for supply of labour. The Party II(a) was making payment of wages to the said workmen. The Party II(a) was supervising over work done by them and it had absolute and ultimate control over the said workmen. The contract is discontinued w.e.f. 31-12-2002 and the services of workmen are terminated by making payment of retrenchment compensation by the Party II(a). The said workmen were not employees of Party II. The contract in respect of cleaning work was genuine. The said workmen have no right to claim regularization and absorption in service with the Party II. On these and above grounds the Party II(a) has prayed for holding that the said workmen are not entitled to any relief from it.

6. The Party I filed its rejoinder on 29-9-2003 at Exb. 14. Averments in the rejoinder are more or less the same with those which are in its claim statement. Further, the Party I denied contentions which are raised by the Party II in its written statement and which are adverse to it.

7. On basis of pleadings of the parties, the then learned Presiding Officer framed issues on 10-8-2003 Exb. 15. The issues are as follows:

1. Whether the Union/Party I proves that it has the locus standi to espouse the dispute on behalf of the workmen and represent them in the reference ?

2. Whether the Union/Party I proves that the contract between the Party II and the Party II(a) is a sham and bogus contract ?

3. Whether the Union/Party I proves that the workmen in the present reference are entitled to regularization of their working conditions by the Party II M/s. Ciba Speciality (India) Ltd., on par with their direct employees ?

4. Whether the Party-II, M/s. Ciba Speciality Chemicals (India) Ltd., proves that there is no industrial dispute between them and the Union/Party I because the workmen in the reference are not their employees ?

5. Whether the Party II – M/s. Ciba Speciality Chemicals (I) Ltd., proves that the reference is not maintainable because the contract is terminated and the workmen are not in employment of the Party II(a) M/s. Super Services ?

6. Whether the Party II(a) M/s. Super Services proves that the reference is not maintainable for the reasons stated in para 1(a), (b) and 1(d) to 1(j) of the written statement ?

7. Whether the workmen in the present reference are entitled to any relief ?

8. What Award ?

8. My findings on above issues are as follows:

Issue No. 1: In affirmative.
Issue No. 2: In negative.
Issue No. 3: In negative.
Issue No. 4: In negative.

Issue No. 5: In negative.
Issue No. 6: In negative.
Issue No. 7: In negative.
Issue No. 8: The workmen are not entitled to any relief as claimed.

REASONS

9. *Issue No. 1:* The workmen by name Gaggappa Talwar and Eknath R. Kandeparkar were admittedly doing cleaning/sweeping work under so called contracts entered into by the Party II with the Party II(a). It has come in evidence of R. V. Joshi who is examined by Party I at Exb. 22 that, earlier the said workmen were members of Union Kamgar Sabha. This union is amalgamated into Mumbai Mazdoor Sabha on 16-12-1999. Since then, the said workmen are members of Mumbai Mazdoor Sabha.

10. The Party I has produced xerox copy of Writ Petition bearing No. 34/97 at Exb. W-3. The writ petition was filed by the Union Kamgar Sabha on behalf of all the workmen, in the Hon'ble High Court of Bombay at Goa with a prayer to regularize services of the workmen as permanent employees and for some other relief's. Exb. 'A' containing names of 27 workmen, and Exb. 'B' containing names of 19 workmen are with xerox copy of Writ Petition. The said two workmen are out of those 27 whose names are enlisted in Exb. 'A' and who were engaged for doing cleaning/sweeping work in the factory and also in factory premises of the Party II. These circumstances clearly support evidence of the witness R. V. Joshi that the said workmen were members of the Union Kamgar Sabha.

11. Xerox copy of certificate of registration of trade union is at Exb. W-1. This xerox copy makes it clear that the Union Kamgar Sabha has been amalgamated with Mumbai Mazdoor Sabha on 16-12-1999. This development has taken place during pendency of the Writ Petition No. 34/97 in the Hon'ble High Court of Bombay at Goa. Pursuant to direction given by the Hon'ble High Court under order dated 18-9-2002, dispute was raised by the Union on behalf of all employees including the said workmen on 1-10-2002, and that Union is Mumbai Mazdoor Sabha. All these facts are also pointer of fact that since after amalgamation the said workmen (Party I) became members of Mumbai Mazdoor Sabha. I accept evidence of the witness R. V. Joshi in this regard.

12. Learned Advocate appearing on behalf of the said workmen (Party I) argued that the Union Mumbai Mazdoor Sabha is representing all employees including the said workmen (Party I), of the Party II M/s. Ciba Specialty Chemicals (India) Ltd. Therefore, according to him, the union Mumbai Mazdoor Sabha is entitled to espouse dispute on behalf of the workmen and to represent the workmen in reference. He relied upon decision given by *Railway Employees' Co-operative Credit Society Ltd., v/s Industries Tribunal, Rajasthan, Jalpur & others reported in 1963 II LLJ 193.* In this reported case there was reference of industrial dispute in regard to some workmen employed by a Railway Employees' Co-op. Credit Society. They were members of Union of railway employees. Under bye-laws of the Union the concerned employee was not eligible to become its members. The Hon'ble High Court of Rajasthan (at Jodhpur) held that:

> *"Even assuming that under section 36(1)(a) of the Industrial Disputes Act, the union could not represent the cases of the employees of the Society, it is difficult to escape the provision of Sec. 36(1)(c) of the Industrial Disputes Act which clearly applied to the instant case. The four employees may not even be the members of the union still they can be represented by it for the reasons that the Society and the Union are both parts of the same industry, namely, transport, and both are functioning under the patronage of the same Railway. There is, thus, a clear connection between the Union and the Society and the said connection also related to the employees of the Railway and the employees of the Society. The union is thus, competent to represent the case of the employees of the Society by virtue of Sec. 36(1)(c) of the Industrial Disputes Act."*

13. Learned Advocate of Party II(a) assailed argument of learned advocate representing the said workmen (Party I) on the ground that there is difference between raising of dispute and representing workmen by the Union. Even for the sake of argument assuming that the Union is entitled to represent the workmen, according to him, the Union is not entitled to raise dispute on behalf of the workmen. He restricted his argument only in respect of question as to whether the union can raise dispute on behalf of the workmen. Section 36(1) of the said Act, 1947 lays down that:

> *"A workman who is a party to the dispute shall be entitled to be represented in any proceeding under this Act by—*
>
> *(a) [any member of the executive or other office bearer] of a registered trade union of which he is a member;*
>
> *(b) [any member of the executive or other office bearer] of a federation of a trade union to which a trade union referred to in clause (a) is affiliated;*
>
> *(c) where the worker is not a member of any trade union by [any member of the executive or other office bearer] of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorized in such manner as may be prescribed."*

14. The Hon'ble High Court of Bombay at Goa under order dated 18-9-2002 passed in Writ Petition No. 34/97 pleased to allow the then Union Kamgar Sabha to make an appropriate representation to the State Government of Goa with regard to the dispute. The union, as stated earlier, is amalgamated into Mumbai Mazdoor Sabha. Pursuant to order dated 18-9-2002 passed by the Hon'ble High Court, the Mumbai Mazdoor Sabha has raised dispute before the Secretary, Department of Labour &

Industries, Government of Goa. Therefore, the argument advanced by learned advocated of Party II that the Union Mumbai Mazdoor Sabha is not entitled to raise the dispute, cannot be entertained. I am unable to agree with his argument. I hold that the Union Mumbai Mazdoor Sabha is entitled to raise the dispute on behalf of the said workmen (Party I).

15. So far question of representation of the said workmen by the Union Mumbai Mazdoor Sabha is concerned, the representation is challenged by the Party II in para No. 7 of written statement (Exb. 12). Contentions raised in this para show that there are 52 workmen employed by the Party II. The Union Mumbai Mazdoor Sabha is representing only one workmen out of 52. The union is not representing majority of the workmen. Therefore, this union is not competent to represent the said workmen. Sec. 36(1) of the said Act, 1947, does not put such hurdle in the way of the union. The contentions raised by the Party II are for sake of contentions which are devoid of merits.

16. Section 36(1)(a) of the said Act, 1947 entitles workman who is a party to dispute to be represented in any proceeding under this Act, by any member of the executive or other office bearer of a registered trade union of which he is a member. The entitlement is not only in respect of raising dispute or of representation but in respect of any proceeding under the said Act, 1947. The Union Mumbai Mazdoor Sabha is duly registered of which the said workmen are members. They are certainly entitled to be represented by the union in raising dispute as well as in the reference. Even for the sake of argument assuming that they are not members of the Union, relying upon decision given by the Hon'ble High Court of Rajasthan at Jodhpur in case of Railway Employees Co-op. Credit Society Ltd., reported in 1963 II LLJ 193 and considering provisions of Sec. 36(1)(c) of the said Act, 1947, I hold that the said workmen are entitled to be represented by the Union Mumbai Mazdoor Sabha as stated above. My answer to the issue is in affirmative.

17. *Issue No. 2:* The present reference and reference bearing No. 11/2003 are in respect of the same dispute which was raised by Union Mumbai Mazdoor Sabha on behalf of all the workmen. It is evident that previously there was company by name M/s. Hindustan Ciba Giegy Ltd. (the said company) which was doing business of manufacturing dyes, pharmaceuticals, drugs, pesticides and chemicals in its Santa Monica Plant at Corlim, Goa. The said company had entered into contracts whereunder contractor by name M/s. Safe (x) services was entrusted with work of maintenance of lawns and gardens in its Santa Monica Plant and housing colony in Corlim, Goa. Xerox copies of the contracts are produced on record of the reference bearing No. IT/11/2003. These contracts were for periods from 10-10-1986 to 9-10-1987 (Exb. W-13), from 31-12-1989 to 31-12-1991 (Exb. E-12), from 1-1-1992 to 31-12-1992 (Exb. E-13), from 1-1-1994 to 31-12-1996 (Exb. E-14) and from 1-1-1997 to 31-12-1997 (Exb. E-15).

18. The said company had entered into contracts whereunder the Party II(a) M/s. Super Services was entrusted with work of cleaning surrounding areas, roads around factory premises and of extending genitorial services in its factory premises. Xerox copies of the contracts are on record of reference bearing No. IT/11/ /2003. These contracts were for periods from 1-11-1989 to 31-12-1990 (Exb. W-20), from 1-1-1991 to 31-12-1991 (Exb. E-7), from 1-1-1992 to 31-12-1992 (Exb. E-7), from 1-1-1993 to 31-12-1993 (Exb. E-7), from 1-1-1994 to 31-12-1996 (Exb. E-8) and from 1-1-1997 to 31-12-1997 (Exb. E-9).

19. The witness R. V. Joshi examined by Party I disclosed in his evidence that the said company is demerged into two companies by name (1) Novartis India Ltd., and (2) M/s. Ciba Speciality Chemicals Ltd., M/s. Syngenta India Ltd., has taken over the company Novartis India Ltd. It is also evident that the Novartis India Ltd., entered into contracts whereunder the contractor M/s. Safe(x) Services was entrusted with work of maintenance of lawn and gardens in and around its factory premises in Santa Monica Plant at Corlim Goa. Xerox copies of the contracts are on record of the reference bearing No. IT/11/2003. These contracts were for periods from 1-1-1998 to 31-12-1998 (Exb. E-16), from 1-1-1999 to 31-12-1999 (Exb. E-16) and for period from 1-1-2000 to 31-12-2000 (Exb. E-16). The said Novartis India Ltd., had entrusted work of cleaning surrounding area, roads around the factory premises and housing colony situated at Corlim, Goa with Party II(a) Super Services under contracts. Xerox copies of these contracts are on record of reference bearing No. IT/11/2003. The contracts for the period from 1-1-1998 to 31-12-1998 is at Exb. 10, while remaining two contracts for periods from 1-1-1999 to 31-12-1999 and from 1-1-2000 to 31-12-2000 are at Exb. 11, colly.

20. The Party II M/s. Ciba Speciality Chemicals (India) Ltd., entered into contracts and entrusted with Party II(a) M/s. Super Services cleaning/sweeping work in its Santa Monica Plant at Corlim, Goa. Xerox copy of first contract which was for period from 1-6-1999 to 31-12-1999 is at Exb. E-1. This contract came to be extended for further periods from 1-1-2000 to 31-12-2000, from 1-1-2001 to 31-12-2001 and from 1-1-2001 to 31-3-2002 by the Party II under its letters dated 1-1-2000, 1-1-2001, and lastly, dated 1-1-2002 respectively. Xerox copies of all these letters are at Exb. E-2, colly.

21. The contracts referred to above prima facie go to show that initially M/s. Hindustan Ciba Geigy Ltd., and thereafter, the Party II M/s. Ciba Speciality (India) Ltd., was getting cleaning work done through the contractor i.e. the Party II(a). Only those contracts which are entered into by the Party II in favour of Party II(a) are challenged by the Party I. It has come in evidence of R. V. Joshi, the witness of Party I, that the Party II which is running business of manufacturing dyes, chemical pesticides, herbicides and pharmaceuticals, works in three shifts, each of eight hours. The Party II was in need of getting cleaning/sweeping work done to maintain clean and dust-free atmosphere because dust

can act as contaminant in process of manufacturing such products. The cleaning/sweeping work is of perennial nature. The said workmen were doing the work of cleaning floor, machinery, glasses, toilets and bathrooms etc. G. K. Prabhu and Ramesh Suktankar who are executives were supervising cleaning work on behalf of Party II. Material which was required for cleaning/sweeping work was provided by the Party II. The said workmen were continuously working without break inspite of change in contractors. The contracts entered into by the Party II with the Party II(a) are sham and bogus.

22. In support of its case, the Party I further examined on its behalf Eknath Khandeparkar (Exb. 20). He is one of the said workmen who were engaged in cleaning/ /sweeping work. He supported that he was doing cleaning/sweeping work initially with M/s. Hindustan Ciba Geigy Ltd., and then after its demerger, with the Party II, that, the said work was of perennial nature, that, the Party II was providing all material required for the cleaning/sweeping work, and that, Mahatme and C. J. Fernandes, and after their retirement, Cardozo and Navati were supervising the cleaning work on behalf of the Party II. He has also explained nature of the work which he was doing. Evidence of the witness R. V. Joshi supported by the witness Eknath Khandeparkar goes to show that the said workmen who were engaged in cleaning/sweeping work were doing their work continuously and without break, that, the work was being supervised by officers of the Party II, that, the material required for the said work was being supplied by the Party II, and that, the cleaning/sweeping work is of perennial nature.

23. The Party II has filled affidavits of R. J. Suktankar and of E.C. Noronha on its behalf at Exb. 21 and Exb. 22 respectively. Both of them are orally examined by the Party II and are cross examined by the Party I. The witness Suktankar is working as an Estate Officer, while remaining witness is working in administration department of the Party II. According to witness Suktankar he never supervised cleaning/sweeping work. The Party II was making lump sum payment to the contractor for the said work. The contractor had control and supervision over the cleaning/sweeping work done by the workmen. The contractor covered the workers under the provisions of Employees' State Insurance Act and Provident Funds Act. In addition, the contractor was maintaining wage and attendance registers. The contracts entered into by the Party II in favour of the Party II(a) are genuine contracts. He further pointed out that the contracts and services of the workmen are terminated by the contractor w.e.f. 31-12-2002.

24. The witness Noronha is examined by the Party II mainly for purpose of proving documents which are produced by the Party II on record. These documents include xerox copies of order dated 18-9-2002 passed by the Hon'ble High Court of Bombay at Goa in Writ Petition No. 34/97 (Exb. E-12), of letter dated 1-10-2002 written by the Union Mumbai Mazdoor Sabha to the Secretary, Department of Labour and Industries, Government of Goa (Exb. E-13), of letter dated 29-10-2002 written by Assistant Labour Commissioner to the Party II (Exb. E-14), of letter dated 8-11-2002 written by Party II to the Assistant Labour Commissioner (Exb. 15), of minutes of the meeting dated 13-11-2002 held by Assistant Labour Commissioner (Exb. E-16), of letter given by workmen to the General Secretary of Kamgar Sabha (Exb. E-17), of settlements dated 30-8-2000 and dated 24-2-2003.

25. Learned advocate appearing on behalf of the Party I elaborately argued that if evidence led by Party I is taken into consideration, it clearly emerges there from that, the said workmen were continuously doing cleaning/sweeping work without break right from the time of M/s. Hindustan Ciba Geigy Ltd., till their services came to be terminated on 31-12-2002, that, there was direct control and supervision of the Party II over the work done by the said workmen, that, the material required for cleaning/sweeping work was being supplied by the Party II and that the said work is of perennial nature. He further pointed out that the payment which is made to the said workmen by the contractor is reimbursed by the Party II. All these circumstances, in his opinion, make it crystal clear that the said workmen are direct employees of the Party II, and therefore, there is relationship of employee and employer between the two.

26. Next contention which is pressed into service by learned advocate of Party I is that even though there is relationship of employees and employer between the said workmen and Party II, the said workmen are purposely treated as contract labour under the contracts entered into by the Party II in favour of the Party II(a). It is with oblique motive to defeat rights of the said workmen, of getting their services regularized and of receiving all benefits on par of permanent employees. Therefore, according to him, such contracts are sham and bogus.

27. Argument advanced by learned advocate of Party I can conveniently be divided in two parts. First part relates to relationship between the said workmen and Party II, while the second part of his argument touches to the contracts which according to him, are sham and bogus. So far the first part of his argument is concerned he relied upon decisions from various reported cases which I am going to refer.

28. In case of *Husseinbhai Calicut ....Petitioner v/s The Alath Factory Thezhilali Union Kozhikode and others... Respondents, reported in (1978) 4 SCC 257,* the Petitioner was a factory owner manufacturing ropes. A number of workmen were engaged to make ropes but they were hired by contractors who had executed agreements with the Petitioner to get such works done. When 29 of those workmen were denied employment, an industrial dispute was referred by the State Government and the award was attacked on the ground that the workmen were not workmen of the petitioner but only of the contractor. The Hon'ble Supreme Court held that:

> *"The facts found that the work done by the workmen was an integral part of the industry concerned, that*

the raw material was supplied by the management, that the factory premises belonged to the management, that the equipment used also belonged to the management, and that the finished product was taken by the management for its own trade. The workmen were broadly under the control of management and defective articles were directed to be rectified by the management. This concatenation of circumstances is conclusive that the workmen were the workmen of the petitioner."

29. In case of *Indian Petrochemicals Corporation Ltd., and another …Appellants; v/s Shramik Sena and Others …Respondents, reported in (1999) 6 SCC 439,* the respondent workmen were employed in the statutory canteen (maintained in compliance with Section 46 of Factories Act) in the appellant's establishment. The canteen was managed by contractor. The said workmen filed Writ Petition before the Hon'ble High Court to seek a declaration that they were regular workmen of the appellant's establishment with right to pay scales and service conditions applicable to regular workmen. They further sought a direction to appellant to absorb them with effect from the date of their entry in the service of the canteen and to pay them all consequential benefits. The appellant opposed the workmen's claim. The Hon'ble High Court directed the appellants to absorb the workmen in employment with certain conditions. The matter went upto the Hon'ble Supreme Court. It was establishment by way of affidavits and the contracts entered into between the management and the contractor that:

a) the canteen has been there since the inception of the appellant's factory;

b) the workmen have been employed for long years and despite a change in contractors the workers have continued to be employed in the canteen;

c) the premises, fixtures, furnitures, fuel, electricity, utensils etc., have been provided for by the appellant;

d) the wages of the canteen workers have to be reimbursed by the appellant;

e) the supervision and control on the canteen is exercised by the appellant through its authorized officers, as can be seen from various clauses of the contract between the appellant and the contractor;

f) the contractor is nothing but an agent or a manager of the appellant, who works completely under the supervision, control and directions of the appellant;

g) the workmen have the protection of continuous employment in the establishment.

Considering all the above factors cumulatively in addition to the fact that the canteen is the establishment of the Management is a statutory canteen, the Hon'ble Supreme Court held that the respondent workmen are in fact the workmen of the appellant management.

30. In case of *Indian Overseas Bank v/s I.O.B. Staff Canteen Workers Union and Anr. Reported in JT 2000(4) SC 503,* question of relationship of 33 canteen workers of Indian Overseas Bank staff canteen with management was involved. The Industrial Tribunal considering facts that:-

a) the canteen is in the premises of the bank,

b) the canteen is for the exclusive use of the staff of the Bank,

c) the working hours and days of the bank,

d) the Bank provided infrastructure like furniture, utensils, refrigerators, water coolers apart from meeting cost of gas, electricity and water,

e) the cost of the materials were met and wages for the workmen are also met only from the funds provided by the Bank,

f) neither the workers nor the Managing Committee contributed either to the capital or the expense for running the canteen,

g) the Bank gave subsidy for supplying food articles to its employees at concessional rates,

h) cycles and tricycles were provided to the canteen for supply of food stuffs,

held that the employees of the canteen will have to be treated as the employees of the Bank. The management filed Writ Petition challenging the Awards passed by the Industrial Tribunal. Hon'ble Single Judge of Madras High Court by order dated 8-3-1996 quashed the impugned Awards. The workers union took up the matter on appeal before Hon'ble Division Bench of the High Court. The Hon'ble Division Bench set aside order of the Hon'ble Single Judge and restored Awards passed by Industrial Tribunal. Appeals were preferred to the Hon'ble Supreme Court against Judgment of the Division Bench of Madras High Court. The Hon'ble Supreme Court dismissed the appeals.

31. In case of *Steel Authority of India Ltd., and others, Appellants v/s National Union Waterfront Workers & others, Respondents, reported in (2001) 7 SCC 1,* the appellants, Central Government Company and its Branch Manager, were engaged in manufacture and sale of various types of iron and steel materials in its Plant located in various parts of India. The business of appellants includes import and export of several products and by products through Central marketing unit of the appellants, having a network of branches in different parts of India. Work of handling the goods in the stockyards of appellants was being entrusted to contractors after calling for tenders in that behalf. The Government of Bengal issued notification dated 15-7-1989 under Section 10(1) of the CLRA Act prohibiting employment of contract labour in four specified stockyards of the appellants. The Government

kept in abeyance the said notification initially for a period of six months by notification dated 28-8-89 and thereafter extended that period from time to time. The Government did not extend period beyond 31-8-94. The first respondent union representing the cause of 353 contract labour filed Writ Petition in Calcutta High Court seeking a direction to the appellants to absorb contract labour in their regular establishment in view of the notification issued u/s 10(1) of the CLRA Act on 15-7-89 and further praying that the notification dated 28-8-89 keeping the said notification dated 15-7-89 in abeyance be quashed. The Hon'ble High Court allowed the Writ Petition.

32. The Hon'ble Supreme Court held in the above reported case of *Steel Authority of India Ltd.,* and others that:-

> *"Engagement of contract labour in connection with Work entrusted to him does not culminate in emergency of master and servant relationship between the principal employer and the contract labour. Where workman is hired through a contractor, master and servant relationship exists. But where a workmen is hired in or in connection with work of an establishment to produce a given result or the contractor supplies workman for any work of the are required to be considered including the terms and conditions of the contract. It is necessary to take a multiple pragmatic approach weighing up all the factors for and against an employment instead of going by the sole "test of control". An integrated approach is needed. "Integration" test is one of the relevant tests. It is applied by examining whether the person was fully integrated into the employer's concern or remained apart from and independent of it. The other factors which may be relevant are—who has the power to select and dismiss, to pay remuneration, deduct insurance contribution, organize the work, supply tools and materials and what are the "mutual obligations" between them".*

34. The Hon'ble Supreme Court in case of *Dharangadhra Chemicals Works Ltd., v/s State of Saurashtra and others, reported in 1957 I LLJ 477* set out guiding principles to determine employer and employee relationship. These guiding principles are referred by the Hon'ble High Court of Bombay at Goa in Writ Petition No. 182 of 2004 (M/s. Sesa Goa Limited v/s The Mormugao Waterfront Workers Union and 3 others) decided on 29-10-2004. These guiding principles are:-

a) *the test which is uniformly applied in order to determine the relationship is existence of right to control in respect of the manner in which the work is to be done and a distinction is also drawn between a "contract for services" and a "contract of service";*

b) *the prima facie test for determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do, but also the manner in which he shall do his work;*

c) *the nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition, and*

d) *the correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer.*

35. Learned advocate for Party II in reply to argument advanced by learned Advocate of Party I, argued that the reference which is made by the Government of Goa is for adjudication of dispute. "Whether on the ground that the contract between M/s. Super Services and M/s. Ciba Specialty Chemical (India) Ltd., is sham and bogus, the demand of Mumbai Mazdoor Sabha on behalf of two workmen namely Gaggappa Talwar and Eknath R. Khandeparkar, for doing away with the existence of middle man as contractor and for regulation of their working condition at par with the direct employees of the company, is legal and justified." There is no reference for adjudication as to whether contracts entered into by Party II with Party II(a) are sham and bogus, and therefore, this Tribunal cannot decide nature of the contracts in dispute. He further argued that neither the second schedule nor the third schedule provided in the Industrial Disputes Act, 1947 which lay down matters within the jurisdiction of Labour Court and of the Industrial Tribunals, includes matters regarding regularization of service of the employees. Therefore, on this count also, according to him, this Industrial Tribunal cannot decide as to whether contracts in dispute are bogus and sham. He also relied upon decisions from reported cases in connection with employer and employee relationship.

36. In case of *Union Carbide (India) Ltd., v/s Desammuel and others, reported in 1998 (80 FLR 684),* the supervisor was delegated supervisory functions. In terms of the same delegation he exercised those powers. The Hon'ble High Court of Bombay pleased to hold that the petitioner falls within the definition of supervisor and therefore would be excluded from definition of workmen. In the present case it is admitted fact that the said workmen are the workmen as defined under Section 2(s) of the said Act, 1947. Therefore, with respect I am of the opinion that the decision relied upon by the learned advocate from this reported case of *Union Carbide India Ltd.,* is not applicable to the present case.

37. In case of *Hari Shankar Sharma and others appellants v/s M/s. Artificial Limbs Manufacturing Corporation and others, Respondents, reported in 2002 1 SCC 337,* employees were of the statutory canteen run by contractors. The question was whether the said employees were employees of the establishment or of the contractor. There was condition in the agreement between the contractor and the establishment that the

new contractor should retain employees who had served under the earlier contractor. The Hon'ble Supreme Court held that such condition would not necessarily mean that such employees were employees of the establishment. Facts of this reported case are also different from that of the present one. I, therefore, with respect hold that decision from this reported case is not applicable to the present case.

38. In case of *workmen of the Canteen of Coats of India Ltd., v/s Coates of India Ltd., and others, Respondents, reported in 2004 3 SC cases 547* employees were of the statutory canteen run by contractor in the premises of industrial establishment. The Hon'ble Supreme Court held that the provision in Factories Act acquiring a canteen to be provided in the industrial establishment premises is not decisive to hold that the workmen employed in such a canteen are workmen of the establishment. In my view facts of this reported case are different from that of the present one. I, therefore, with respect hold that, decision relied upon by the learned advocate from this reported case is also not applicable to decide question regarding relationship of employees and employer between the said workmen and the Party II.

39. Next reported case which is relied upon by learned advocate of Party II is of M/s. Sesa Goa Ltd., v/s Mormugao Waterfront Workers Union and 3 others (Writ Petition No. 182/2004) decided on 29-10-2004 by the Hon'ble High Court of Bombay at Goa. Guiding principles set out by the Hon'ble Supreme Court in case of *Dharangadhra Chemicals Workers Ltd., v/s State of Saurashtra and Others reported in 1957 I LLJ 477* to determine employer and employee relationship and which are referred by the Hon'ble High Court of Bombay at Goa, in case of *M/s. Sesa Goa Ltd.,* are already reproduced above. It is not necessary to reproduce the guiding principles.

40. Contention raised by learned advocate of Party II that this Tribunal is not called upon to decide as to whether the contracts in dispute are sham and bogus, and therefore, this Tribunal cannot decide nature of the said contracts, goes to root of the issue. So it is necessary to deal with the said contention first. It is true that under the present reference, the dispute as to whether the contracts entered into by the Party II with the Party II(a) are sham and bogus is not specifically referred for adjudication. What is referred for adjudication is that whether demand of Mumbai Mazdoor Sabha on behalf of workmen for extension of appropriate relief of either absorption or regularization with consequential benefits is legal and justified on the ground that the contract between Party II and Party II(a) is sham and bogus. Main relief claimed on behalf of the said workmen is of absorption or regularization in service with consequential benefits. While deciding main dispute ancillary questions are also required to be dealt with. The Hon'ble Supreme Court held in case *of Gujrat Electricity Board, Appellant v/s Hind Mazdoor Sabha and Others, Respondents, reported in (1995) 5 Supreme Court Cases 27* that the Industrial Tribunal can adjudicate dispute raised by workmen of so called contractor for being declared to be employees of the principal employer on the ground that the contract was sham, only after coming to conclusion that the contract was sham. I, therefore, do not agree with the contention raised by learned advocate of Party II. I hold that the question as to whether the contracts in dispute are sham and bogus will have to be decided before coming to conclusion in respect of prayer made on behalf of the said workmen, for absorption or regularization in service with Party II, with consequential benefits.

41. Discharge or dismissal of workmen including reinstatement of, or granting of relief to workmen wrongfully dismissed is one of the matters within jurisdiction of Labour Courts as provided by second schedule given in the said Act, 1947. The present dispute which is referred for adjudication is in respect of relief's claimed by the union on behalf of the said workmen. They came to be terminated from the services after the dispute was raised before the competent authority. The termination is separately challenged. I, therefore, hold that the present dispute comes within purview of matters which are within jurisdiction of the labour court. I, do not agree with argument advanced by learned advocate of Party II.

42. Burden of proof for existence of relationship of employer and employee lies upon the person who sets up a plea of its existence. This position is made clear by the Hon'ble Supreme Court in case of *workmen of Nilgiri Co-operative Marketing Society Ltd., reported in 2004 LLR 351.* In the present case, such plea is raised by the said workmen. Therefore, it is for the workmen to prove existence of such relationship. They are claiming to be employees of the principal employer i.e. of the Party II on grounds that:

a) they were continuously doing cleaning work without break right from time of M/s. Hindustan Ciba Geigy Ltd., till termination of their services w.e.f. 31-12-2002,

b) there was direct supervision and control of Party II over work done by them,

c) material required for the said work was being supplied by Party II,

d) the said work which they were doing was of perennial nature, and lastly,

e) the payments which were being made to them by contractor are reimbursed by the Party II.

It appears from list of 24 workmen (Exb. W-2) which is along with xerox copy of Certificate of Registration of the Trade Union (Exb. W-1) that the said workmen Gangappa Talwar and Eknath Khandeparkar were appointed as sweepers w.e.f. 1-11-1991 and 1-3-1993 respectively. It is not in dispute that both of them were doing cleaning/sweeping work till 31-12-2002 i.e. till termination of their services.

43. The Company M/s. Hindustan Ciba Geigy Ltd., introduced the Party II(a) as contractor for cleaning/

/sweeping work for the first time in the month of November, 1989. This is evident from xerox copy of contract produced at Exb. W-20 in reference bearing No. IT/11/2003. It follows that the said two workmen came to be employed for cleaning/sweeping work after the Party II (a) came to be introduced as contractor. There is no change in the contractor since after month of November, 1989 till 31-12-2002 i.e. till termination of services of the said workmen.

44. There is no documentary evidence on behalf of the said workmen (Party I) to show as to whether prior to the year 1989 the cleaning/sweeping work was being done through the contractors. There is also no documentary evidence to disclose names of those contractors, if any, who were doing such works prior to the year 1989. If the dates of appointments of the said workmen and the fact that they were doing cleaning/sweeping work till 31-12-2002 are taken into consideration, the evidence led by Party I that the said workmen were continuously doing the said work without break in service from dates of their respective appointments till the date of termination of their services, as rightly pointed out by their learned advocate, appears to be probable, convincing and as such it can safely be accepted.

45. There is no independent corroboration to evidence of the witnesses examined by Party I to prove that there was supervision and control of officers of the Party II over the cleaning/sweeping work done by the said workmen. Witness No. 1, R. G. Suktankar examined by the Party II, has denied in clear terms in his evidence that there was such supervision or control by officers of the Party II. Therefore, in absence of independent corroboration, I hold that, it will not be proper and correct to believe and to accept evidence led by Party I.

46. Witness R. L. Cardozo examined on behalf of M/s. Syngenta (India) Ltd., in reference bearing No. IT/ /11/2003 admitted in his cross examination that he was giving instruction to the workmen in relation to gardening and cleaning work, and that, sometimes he was checking the work done by the workmen. In the present case, witness R. G. Suktankar examined by the Party II at Exb. 21 admitted in his cross examination that, officers Rataboli and Mahatme were supervising gardening and cleaning/sweeping works. These admission are used by learned advocate of Party I to prove that there was control and supervision of Party II over the cleaning/sweeping work. Though there was such exercise by the said officers of the Party II, in my view, it was to ensure that the cleaning work is carried out by the said workmen properly. This however, does not mean that the said workmen became employees of the Party II.

47. There is also no independent evidence in support of that of the witnesses examined by Party I to prove that, tools and material required for the cleaning work were being supplied by the Party II. It reveals from para No. 9 of affidavit in evidence (Exb. 21) file by witness R. G. Suktankar on behalf of Party II, that the Party II(a) was to supply materials and tools required for the cleaning work. So, in absence of independent evidence, I hold that it will not be proper and correct to rely upon evidence of witnesses examined by Party I.

48. It is apparent from terms and conditions of contract dated 1-6-1999 entered into by the Party II with the Party II(a) and which was for period from 1-6-1999 to 31-12-1999 that it was the responsibility of Party II(a) to engage employees and to get cleaning work done through the employees under his supervisory personnel. Terms and conditions set out in the said contract further show that the Party II(a) was under obligation to provide all materials, tools and appliances such as detergents, floor mops, brooms, soaps and the like, required for the cleaning work and to carry out agreement.

49. If terms and conditions set out in the contract referred to above are taken into consideration, on that count also, evidence of the witnesses examined by the Party I to prove that there was direct supervision and control of the Party II over work done by the said workmen, and that, all material and tools required for the cleaning work were supplied by the Party II, cannot be accepted. I, therefore, hold that the Party I failed to prove these two conditions/requirements which are essential to establish relationship of the said workmen as employees of the Party II.

50. In case of *Husseinbhai Calicut, reported in (1978) 4 Supreme Court Cases 257,* factory owner was dealing with manufacturing ropes. Workmen were engaged through contractors to make ropes. Work done by workmen was integral part of the industry. In case of *India Petrochemicals Corporation Ltd., and another, reported in (1999) 6 Supreme Court Cases 439,* workmen were of statutory canteen managed by contractor on behalf of establishment. In case of *Indian Overseas Bank reported in JT 2000 (4) SC 503,* workmen were of canteen attached to establishment. In case of *Steel Authority of India Ltd., reported in (2001) 7 SCC 1,* workmen who were contract labour and on whose behalf dispute was raised by union, were engaged to do work of handling goods in stockyards of the said company. In case of *Ram Singh and others reported in (2004) 1 SCC, 126,* contract employees were employed in the sub-station to maintain supply of electricity. In case of *M/s. Sesa Goa Ltd.* (Writ Petition No. 182/2004 decided on 29-10-2004), Respondent No. 2 was engaged by the company for looking after the complete transhipping activities of the vessel. Workmen were engaged by Respondent No. 2 on the vessel. Thus, from all these reported cases, it can be seen that the workmen were engaged for or in connection with the works which their respective establishments were carrying on. In the present case, Party II is running business of manufacturing dyes, pesticides, pharmaceuticals, chemicals, while the said workmen were doing cleaning/sweeping work. To this extent, facts of the above mentioned reported cases are different from that of the present one. I, therefore, with respect hold that these reported cases are not applicable to the present case to hold that the cleaning work is integral part of Party II. Such work is only with a view to maintain clean and healthy atmosphere in the

factory premises. I, therefore, hold that, the cleaning/ /sweeping work though prima facie appears to be of perennial nature, that is not perennial having regard to nature of manufacturing business or of integral part of the Party II.

51. The Party II under the contracts agreed to pay lumpsums per month to the contractor i.e. the Party II(a) in consideration of services rendered and responsibilities and obligations undertaken by the contractor. This does not mean that the payments made to the said workmen by the contractor are reimbursed by the Party II. There is no sufficient and convincing evidence on behalf of Party I to prove that the payments made to the workmen by the contractor are reimbursed by the Party II. I, therefore, do not accept evidence led by Party I and argument advanced by its learned advocate in this regard.

52. The grounds except that of continuity of the said workmen in service without break are not proved by the Party I. Mere continuity in service, as decided by the Hon'ble Supreme Court in case of *workmen of Nilgiri Co-operative Marketing Society Ltd., reported in 2004 LLR 351,* would not be construed that relationship of employer-employee has come into existence. Though the said workmen were working continuously without break since their respective appointments, there is no clause in the contracts in dispute that the contractor i.e. Party II(a) was under obligation to retain and engage compulsorily the same workmen. The contractor has been made liable to comply with provisions of the Contract Labour (Regulation and Abolition) Act, 1970. The contractor made applicable to the said workmen, provisions of Employees' State Insurance Act, Employees' Provident Funds Act and of Payment of Bonus Act. The contractor is made liable to comply with all other Rules and Regulations also, applicable to the said workmen.

53. Another fact which is very important and which is pointed out by learned advocate of Party II should be taken into consideration. The Goa Trade & Commercial Workers Union, the then representative of the workmen, by its letter dated 1-12-1992 had submitted charter of demands on behalf of the workmen to management of the Party II(a). Settlements in respect of those demands are arrived at between the parties on 2-3-1995. Xerox copy of settlement arrived at between representatives of the workmen and Party II(a) is at Exb. E-1, colly, in ref. No. IT/11/2003. The Party II is not a party to this settlement. This fact clearly goes to show that the said workmen were treating themselves to be employees of the contractor and not of the management. In this context, I rely upon decision given by the Hon'ble Supreme Court in case of *Haldia Refinery Canteen Employees Union and others, reported in 2005 Supreme Court Cases (L&S) 593.* The Party I did not prove all essential factors which are necessary and which are laid down in the reported cases, alluded Supra, to establish relationship of the workmen with Party II, as employees and employer. I do not accept case made out by the workmen that they are employees of the Party II, and that, therefore, there is relationship of employees and employer between them and the Party II.

54. Now coming to second part of argument advanced by learned advocate of Party I, it is necessary to reiterate that he is claiming the contracts in dispute as sham and bogus mainly on the grounds that the said workmen are direct employees of the principal employer i.e. Party II, and that, the workmen are treated as contract labour under the said contracts by Party II only with intention to keep away the workmen from status of permanency in the service and from getting consequential benefits on par of permanent employees. In case of *Ahamdabad Electricity Co. Ltd., v/s Electricity Mazdoor Sabha reported in 1998 II CLR 820,* relied upon by him, the workmen were doing work connected with activities of the company. Evidence on the record was showing that the work which was being done was of perennial nature to be done continuously and without any interruption, that, the petitioner company was making lot of profit in its business, that, part of rise in the profit was on account of denial of due wages to the workmen, that, inspite of having continuous and regular work as well as financial capacity to regularize the workman and to pay them wages, the company treated the workmen as contract labour and though the company was having 100 vehicles it was having only three regular drivers on its establishment. Considering all these circumstances, it is held by the Hon'ble High Court of Gujarat that the company was continuing in dubious contract labour system.

55. In the present case, basic ground that there is relationship of employer and employee between Party II and the said workmen (Party I) pressed into service by Party I to prove that the contracts in dispute are sham and bogus, is not proved by the Party I. Once such relationship is not proved, in my opinion, the Party I is not entitled to challenge nature of the contracts in dispute. Further, it is also not proved that the cleaning work which the said workmen (Party I) were doing, was integral part of Party II. Facts of the above reported case of *Ahmedabad Electricity Co. Ltd.,* are totally different from that of the present one. Therefore, this reported case is not helpful for advocate of Party I to decide nature of contracts in dispute.

56. Hon'ble Supreme Court held in case of *Ghatge and Patil Concern's Employees Union v/s Ghatge-Patil (Transports) Pvt. Ltd., and another, reported in 1968 I LLJ 566,* relied upon by learned advocate of Party II that there does not appear to be any bar in law to the introduction of the new contract system.

57. The "contract labour" has been defined in Section 2(1)(b) of Contract Labour (Regulation and Abolition) Act, 1970 to mean a workman who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor with or without the knowledge of principal employer. Section 2(1)(c) of the said Act, 1970 defines "contractor" to mean

a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contract.

58. In the present case, the said workmen were engaged by their contractor i.e. by the Party II(a) to do cleaning work of establishment i.e. of Party II. Therefore, it was contract labour system which was introduced by Party II. In other words, the contractor had been interposed on the ground of having undertaken to produce any given result for the establishment, and not for supply of contract labour for work of the establishment i.e. Party II. The contracts entered into by the Party II in favour of the Party II(a) do not reveal to evade compliance with various beneficial legislations so as to deprive the workmen of benefits thereunder. In view of these reasons and above discussion, I come to irresistible conclusion that the contracts in this dispute are not sham and bogus contracts. My answer to the issue is in negative.

59. *Issue No. 3:* The Party I is claiming for absorption or regularization of the workmen in services of the Party II mainly on two grounds: (1) that the workmen are employees of the principal employer i.e. of Party II, and (2) that the contracts entered into between the Party II and Party II(a) whereunder the workmen are treated as contract labour, are sham and bogus.

60. In case of the *Standard Vacuum Refining Co. of India Ltd., Appellant v/s Their Workmen and another, Respondents, reported in AIR 1960 Supreme Court 948,* work of cleaning, maintenance of refinery (Plant and Premises) was given to contractors. A dispute was raised by workmen of the company with respect to contract labour employed by the Company. The workmen claimed for absorption in regular services of the company. The Hon'ble Supreme Court held that there was industrial dispute between parties, and that, Industrial Tribunal can issue in proper cases direction to abolish contract system.

61. It should be noted that the Contract Labour (Regulation & Abolition) Act came into force in the year 1970. The Hon'ble Supreme Court held in case of *R. K. Panda and others, petitioners v/s Steel Authority of India and other, Respondents, reported in 1994 II CLR 402,* that the said Act, 1970 is enacted to regulate employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. Decision given by Hon'ble Supreme Court in case of *Standard Vacuum Refining Co. of India Ltd.,* is prior to coming the said Act of 1970 in force. Under this circumstance, with respect, I am of the opinion that it will not be correct to make the decision from this reported case applicable to present case.

62. The Hon'ble Supreme Court in case of *R. K. Panda,* referred to above gave directions to absorb the petitioners as per details in para 8 of the judgment. In this reported case, according to petitioner, they had been employed by the respondent through various contractors. They were doing jobs which are perennial in nature and identical to jobs which were being done by regular employees. The contractors used to be changed. But while awarding the contract one of the terms incorporated in the agreement was that the incoming contractors shall employ the workers of the respective outgoing contractors subject to requirement of the job. These facts are also clearly distinguishable from that of the present one. With respect, I am of opinion that this decision is also not applicable to the present case.

63. In case of *Steel Authority of India Ltd., v/s National Union Waterfront Workers and others reported in (2001) 7 SCC 1,* the Hon'ble Supreme Court held in para Nos. 125 (5) and (6) of the judgment that:

5) *On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise in an industrial dispute brought before it by any contract labour in regard to condition of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.*

6) *If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if other wise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than the technical qualifications.*

64. The Hon'ble Supreme Court held in case of *Gujrat Electricity Board, Thermal Power Station, Ukai, Appellant v/s Hind Mazdoor Sabha and others, Respondents, reported in AIR 1995 SC 1893* relied upon by learned advocate of Party II that, authority to abolish contract labour is exclusively vested in appropriate Government and that no court or industrial adjudicator can abolish contract labour provided that the contract must be genuine. In the present case appropriate Government i.e. the Government of Goa did not issue prohibition notification as provided under Section 10(1) of the said Act, 1970. It follows that the Party II was not prohibited to introduce contract labour system. The contract entered into between the Party II and Party II(a) reveals to be genuine. The Party I did not succeed in proving the main two grounds on which they have claimed for absorption/regularization in service of Party II with consequential benefits on par of permanent employee of Party II. I, therefore, answer the issue in negative.

65. *Issue No. 4:* Section 2(3) of the said Act, 1947 lays *down that 'employer' names —*

i) *in relation to any industry carried on by or under the authority of any department of (the Central Government or a State Government), the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;*

ii) *in relation to an industry carried on by or on behalf of a local authority, the Chief Executive Officer of that authority.*

Section 2(k) of the said Act, 1947 lay down that:-

> *"industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons;*

Relevant portion of Section 2(s) of the said Act, 1947, lays down that:

> *"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute.*

66. The Party II is the industry as defined under Section 2(j) of the said Act, 1947. It is carrying on business of manufacturing dyes, pharmaceuticals and chemicals etc. It is the employer as defined under Section 2(g)(ii) of the said Act, 1947. Though the said workmen (Party I) were employed by the Party II(a) for gardening work which is not integral part of the Party II, they were employed to do manual work in the industry. Therefore, the workmen become employees within the meaning of Section 2(s) of the said Act, 1947.

67. The dispute raised by the said workmen (Party I) is between the workmen and employer and it is connected with the employment, or non-employment or with conditions of labour. Therefore, it is the industrial dispute as defined under Section 2(k) of the said Act, 1947. It will not be correct to hold that only because the said workmen are not employees of Party II, there is no industrial dispute between the two. I do not agree with stand taken by the Party II. My answer to the issue is in negative.

68. *Issue No. 5:* The contract which was lastly renewed for the period from 1-1-2002 to 31-3-2002 and which was entered into between the Party II and the Party II(a) is terminated w.e.f. 31-12-2002. In fact, there was no contract between these two parties on this date. The contract which came to be executive for the period from 1-1-2002 to 31-3-2002 is not renewed, therefore, the question of termination of the contract does not arise. It is the case of the said two workmen that their services are also terminated by the Party II(a) w.e.f. 31-12-2002.

69. At the time of raising dispute on 1-10-2002 before the Secretary, Department of Labour and Industries, Government of Goa, the said two workmen were not in service. Pursuant to the dispute, reference is made to the Industrial Tribunal by the Government of Goa under Section 10(1)(d) of the said Act, 1947. For the purpose of any proceeding under the said Act, 1947, in relation to an industrial dispute, the workmen includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute. Termination of service of the said workmen is in connection with that dispute. Therefore, and in view of finding given to issue No. 4, I hold that even though contracts are terminated and the said workmen are not in employment of Party II(a), the reference is maintainable. I do not agree with objection taken by the Party II, to maintainability of the reference. I answer the issue in negative.

70. *Issue No. 6:* The Party II(a) raised contentions in para No. 1(a), 1(b) and 1(d) to 1(i) of its written statement that the reference is not maintainable on following grounds:

1(a) that, there is no industrial dispute between Party II and Party II(a),

1(b) that, no dispute was raised by Party II with Party (a). No demand was made by or on behalf of workmen to Party II(a),

1(d) that, the reference is without application of mind and on irrational grounds,

1(e) that, there were no subsisting contracts on the date of reference, services of the workmen are terminated before date of reference,

1(f) that, this Tribunal has no jurisdiction to entertain and decide reference against Party II(a),

1(g) that, the purported dispute is barred by inordinate delay and latches,

1(h) that, the statement of claim is not signed by competent person, and

1(i) that the claim statement is not properly verified.

71. It is proved that there is industrial dispute between the said workmen and Party II. The said workmen did not raise industrial dispute against Party II(a) because they are claiming to be direct employees of Party II. The question as to whether there is no industrial dispute between Party II and Party II(a) is of no consequence for maintainability of the reference.

72. The said workmen raised dispute mainly against the Party II which is an industry. The facts that the Party II did not raise dispute with the Party II(a), and that, there was no demand by or on behalf of the said workmen to the Party II(a) are not material for maintainability of reference.

73. The Party II did not prove how the reference is without application of mind and as to how it is based on irrational grounds. Nobody on behalf of this party stepped into witness box. Facts and circumstances do clearly reveal that the reference is not of such nature. I have already held that the reference is maintainability even though the contracts were not in existence and the said workmen were not in the services of the Party II(a) on the date of reference. Therefore, the ground raised in para No. 1(e) of the written statement does not survive.

74. The reference is made by appropriate Government as per provisions contained in Section 10(1)(d) of the said Act, 1947, to this Industrial Tribunal for adjudication. On such reference, as per provisions of Section 15 of the said Act, 1947 the Industrial Tribunal has to hold its proceeding expeditiously and to submit its award to the appropriate Government. So, the plea that this Tribunal has no jurisdiction to entertain and to decide the reference is devoid of merits and as such it must fall to ground.

75. The Mumbai Mazdoor Sabha raised dispute before the Secretary, Department of Labour and Industries, Government of Goa on behalf of workmen on 1-10-2002, which is within 13 days from order dated 18-9-2002 passed by the Hon'ble High Court of Bombay at Goa in Writ Petition No. 34/97. The dispute is raised within time limit given by the Hon'ble High Court. It cannot be said that there is inordinate delay in raising the dispute.

76. The claim statement is signed and verified by R. V. Joshi, witness No. 1 of Party I, as Local General Secretary of Mumbai Mazdoor Sabha which is representing the workmen. He is member of the executive or an office bearer of the registered trade union of which the said workmen are members. He is competent person to sign the claim statement. The claim statement is also properly verified by him. It is well settled position that the rules of pleading area not strictly applicable to proceeding under the said Act, 1947. So, even for the sake of argument assuming that there is no proper verification that cannot be a sufficient ground to hold that the reference is not maintainable. In view of this reason and above discussion, I do not accept grounds raised by Party II(a) and which are reproduced above, to prove that the reference is not maintainable. My answer to the issue is in negative.

77. *Issue No. 7:* As a result of findings given to issues No. 2 and 3, I answer the issue in negative which leads to adjudication of the reference with the same fate. With this I proceed to adjudicate the reference by passing order as follows:-

ORDER

1. The demand of Mumbai Mazdoor Sabha on behalf of workmen namely, Gaggappa Talwar and Eknath R. Khandeparkar for doing away with extra middle man as contractor and for regularizing all other working conditions at par with direct employees of the company, on ground that contract between M/s. Super Services and M/s. Ciba Specialty Chemicals (India) Ltd., is sham and bogus, is not legal and justified.
2. The said workmen are not entitled to any relief's claimed by the Union Mumbai Sabha, on their behalf.
3. No order as to costs.
4. The Award be submitted to the Government of Goa as per provision contained in Section 15 of the Industrial Disputes Act, 1947.

Dilip K. Gaikwad,
Presiding Officer,
Industrial Tribunal-Cum-
-Labour Court-I.

Notification

No. 28/18/2007-LAB/837

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 26-7-2007 in reference No. IT/31/2001 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 22nd August, 2007.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI-GOA

(Before Shri Dilip K. Gaikwad, Presiding Officer)

Case No. IT/31/2001

Smt. Navneet Mapari,
Shetye and Salkar Residency,
Flat No. B-7, 3rd Floor,
Near Sona Hotel,
Fatorda, Margao, Goa. ... Workman/Party I

V/s

M/s. Govind Poy Oxygen Limited,
Post Box No. 23,
Margao, Goa. ... Employer/Party II

Workmen/Party I - Represented by Adv. V. P. Halarnkar.

Employer/Party II - Represented by Adv. G. B. Kamat.

AWARD

(Passed on this 26th day of July, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts giving rise to the present reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under order dated 15-5-2001 has referred to this Industrial Tribunal following dispute for adjudication.

(i) Whether the action of the management of M/s. Govind Poy Oxygen Limited, Margao, Goa, in terminating the services of Smt. Navneet Mapari, Clerk, w.e.f. 1-1-2001 is legal and justified ?

(ii) If not, to what relief the workperson is entitled ?

2. In response to notices, both the parties put their appearance in this Industrial Tribunal. The Party I presented her claim statement on 19-6-2001 at Exb. 3. It appears from claim statement that the Party I was employed in establishment of the Party II as a Clerk w.e.f. 2-9-1991. The Party II confirmed her in the service w.e.f. 1-7-1992. The Party I was rendering service faithfully and diligently. She did not receive adverse remarks during her service career. The Party II suddenly by letter dated 28-12-2000 terminated her service w.e.f. 1-1-2001 on ground that she is surplus in category of Clerks. The Party II did not terminate service of those employees who are subsequently appointed. Termination of her service is in violation of provisions contained in Sections 25F and 25G of the said Act, 1947. She raised a dispute before Deputy Labour Commissioner. The Proceeding which was set ex-parte by the Deputy Labour Commissioner, ended in failure. Therefore, the Government of Goa has referred to this Tribunal the dispute for adjudication as stated earlier.

3. The Party I by presenting the claim statement has prayed for reinstatement in the service with full back wages with continuity in service and with consequential benefits.

4. The Party II resisted the claim statement by filing its written statement on 6-8-2001 at Exb. 5. It appears from written statement that the Party II is a public limited company having its registered office at Govind Poy House, Rua Do Padre Miranda, Margao, Goa. It carries on business of manufacturing and of supply of oxygen and other industrial gases in its factory establishment situated at Arlem, Raia, Salcete, Goa. Supply of the gases is done through gas cylinders. The Party I was appointed as trainee clerk on certain terms and conditions under its letter dated 2-9-1991. She was confirmed in the said post w.e.f. 1-7-1992 on the same terms and conditions set out in the appointment letter. She was attending work of maintenance of cylinder records, along with three clerks and three typists-cum-clerks till the month of August, 2000 in office of the Party II. Thereafter she was attending work in factory establishment of the Party II till the month of December, 2000. Due to total computerization of the work relating to maintenance of cylinder records, the Party II decided to reorganize the work. While doing so, services of the Party I and of two more employees working as clerks were found to be surplus. Therefore, the Party II terminated services of the Party I and of those two employees w.e.f. 1-1-2001. The Party II has made payments including notice pay, retrenchment compensation, wages and other dues coming to total of Rs. 43,756.80 ps. under cheque dated 27-12-2000 to the Party I, along with termination letter. The Party I accepted the cheque. Since thereafter she did not return to her duties. The Party II did not make appointments after termination of service of the Party I. She is gainfully employed after termination of her service. She is not entitled to any of the relief's claimed by her.

4. The Party I submitted rejoinder on 16-8-2001 at Exb. 6. Averments from this rejoinder are more or less the same with those which are in the claim statement. It is not necessary to reiterate the averments from the rejoinder. Further, she has denied all contentions which are raised by the Party II in the written statement and which are adverse to her interest.

5. On basis of pleadings the then learned Presiding Officer framed issues on 20-9-2001 at Exb. 7. The issues are as follows:-

1. Whether the Party I proves that termination of her service by the Party II w.e.f. 1-1-2001 is in

violation of Sections 25F and 25G of the Industrial Disputes Act, 1947 ?

2. Whether the Party I proves that the action of the Party II in terminating her service w.e.f. 1-1-2001 is illegal and unjustified ?

3. Whether the Party I is entitled to any relief ?

4. What Award ?

7. My findings on the above issues are as follows:

Issue No. 1: In negative.
Issue No. 2: In negative.
Issue No. 3: In negative.
Issue No. 4: As per final order.

REASONS

7. *Issue Nos. 1 & 2:* Fate of issue No. 2 is depending upon finding on the issue No. 1. Therefore and to avoid repetition I am deciding these two issues together.

The Party II is a public limited company. It is carrying on business of manufacturing and of supply of oxygen and other industrial gases in its factory establishment situated at Arlem, Raia, Salcete, Goa. Supply of the gases is done through gas cylinders. Admittedly, the Party I was appointed as a trainee clerk in establishment of the Party II in the year 1991. Xerox copy of appointment letter dated 2nd of September, 1991 is produced at Exb. W-1. She was confirmed in the service w.e.f. 1-7-1992. Xerox copy of confirmation letter is at Exb. W-2. She was doing clerical work and was also operating computer in establishment of the Party II. By letter dated 28-12-2000 the Party II terminated service of the Party I w.e.f. 1-1-2001 on the ground that she is found surplus in category of the clerks and therefore the Party II did not require her service.

8. Evidence of the Party I is at Exb. 9. It appears from her evidence that the Party II after confirming her in the service has appointed Mrs. Anita Naik, Mrs. Janet D'Cunha in the year 1994, Mrs. Medha Joshi, Sujan Naik in the year 1997 and Dilip Naik in the year 2000 in category of the clerks. These employees are still in employment of the Party II.

9. The Party I examined a witness Pandurang Bhat at Exb. 10. He was working as clerk in head office of Southern Gas Limited situated at Margao. It seems that he is examined to prove that the said Southern Gas Limited is sister concern of the Party II, and that, there is a common depot of these two sister concerns at Margao. In my view, evidence of this witness is not much helpful to the Party I to prove that she was not found surplus in category of the clerks. Though she has pointed out in her evidence that she has done work in Southern Gas Limited also, this witness never worked with her.

10. According to the witness Smt. Sudha Bhat who is examined on behalf of the Party II at Exb. 11, computerization of work relating to maintaining record of cylinders is done in the establishment of the Party II in the month of December, 2000. The Party II terminated service of the Party I because the Party I is found surplus in category of the clerks doing such work.

11. Learned advocate of the Party I was absent at the time of argument. Learned advocate of the Party II argued that the Party II completed computerization work and reorganized the work relating to maintenance of record of cylinders in the month of December, 2000. On reorganization of the work the Party II found service of the Party I surplus, and therefore, the Party II terminated her service. It is for the Party II to decide whether a particular policy in running its business would be profitable, economic or convenient. Therefore, according to him the Party I cannot challenge termination of her service and which is on the ground that her service is found surplus. In this context, he relied upon decision given by the Hon'ble Supreme Court in case of *M/s. Perry and Company Ltd., v/s P. C. Pal and others reported in 1970 II LLJ 429*. Catch-words of decision relied upon by the learned advocate are as follows:-

> *"Industrial Disputes Act, S. 25F reorganization of business held to be within the managerial discretion of the employer bonafide reorganization of business resulting in retrenchment of labour, held did not give jurisdiction to the Tribunal to go into the question as to the proprietee of such reorganization of business and the consequent discharge of surplus labour held that S. 25F provided compensation to soften the blow suffered by the employees consequent upon such retrenchment-Profitablility, economic, or convenience of the business reorganization, held are matters to be decided by the employer and not by the Tribunal held further that in finding out whether there was such policy of reorganization, Tribunal should confined itself to pleadings and issues."*

12. The Party II admitted in her cross examination that, work of maintaining records of cylinders was partially computerized in the month of August, 2000 and subsequently it came to be completed in the month of December, 2000. This admission is also a pointer of fact that there is total computerization of the work relating to maintenance of cylinder-records in the month of December, 2000 in establishment of the Party II. Case made out by the Party II that after computerization it reorganized the work and at that time service of the Party I was found surplus in category of the clerks, appears to be probable and as such it can safely be accepted. Relying upon decision given by the Hon'ble Supreme Court in the reported case, alluded Supra, I hold that reorganization of the work was within managerial discretion of the Party II. The Industrial Tribunal cannot go in to the question as to the propriety of such reorganization of the work and the consequent discharge of surplus labour. If such reorganization results in surplusage of employees, no employer is expected to carry the burden of economic dead weight, and retrenchment has to be accepted as inevitable. Further,

there is also nothing in evidence of the Party I to draw inference that there was malafide intention on part of the Party II in reorganization of the work after the computerization and in terminating her service. I agree with argument advanced by learned advocate of the Party II that the Party I is not entitled to challenge termination of her service, which is on the ground that her service is found surplus on reorganization of the work.

13. Party I has challenged termination of her service mainly on the grounds that the termination is in violations of provisions contained in Sections 25 F and 25 G of the said Act, 1947. Section 15 F lays down that–

> *"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until–*
>
> *(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of the notice,*
>
> *(b) the workman has been paid, at the time of retrenchment, compensations which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any party thereof in excess of six months, and*
>
> *(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."*

14. Party I did not give one month's notice in writing to the Party I before terminating her service. The Party I has received Rs. 43,756.50 ps. under cheque dated 17-12-2000. This fact is supported by xerox copy of statement of final settlement of account produced at Exb. W-7. The Party II has made payments to the Party I as prescribed under Section 25 F (a) and (b) of the said Act, 1947.

15. There is nothing in evidence to show that the Party II served notice in the prescribed manner on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette. In this connection, it is necessary to have reference of decision given by the Hon'ble Supreme Court in case of *Bombay Union of Journalists and others, appellants v/s the State of Bombay and another, Respondents, reported in AIR 1964 SC 1617.* The Hon'ble Supreme Court held in this case that:-

> *"A closure examination of S. 25 F shows that clause 'C' of S. 25 F cannot receive the same construction as clauses (a) and (b) of S. 25 F. Section 25 F(a) requires that the workman has to be given one month's notice in writing, indicating the reasons for retrenchment, and the period of notice has to expire before the retrenchment takes place, it also provides that the workman can be paid in lieu of such notice wages for the said period. Reading the latter part of cl.(a) and cl. (c) together, it seems to follow that in cases falling under the latter part of cl.(a) the notice prescribed by cl.(c) has to be given not before retrenchment but after retrenchment, otherwise the option given to the employer to bring about immediate retrenchment of the workman on paying him wages in lieu of notice, would be rendered nugatory. Therefore, cl.(c) cannot be held to be a condition precedent even though it has been included under S. 25 F alongwith cls. (a) and (b) which prescribes conditions precedent."*

Relying upon the above decision, I, hold that even though the Party II did not comply with the condition stated in clause (c) under Section 25 F of the said Act, 1947 that will not be a ground to conclude that termination of service of the Party I is in violation of provisions contained in Section 25 F of the said Act, 1947.

16. Section 25 G of the said Act, 1947 is in respect of procedure for retrenchment. This section lays down that:-

> *"Where any workman in an industrial establishment who is a citizen of India is to be retrenched and he belongs to a particular category of workman in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman."*

17. The Party I has pointed out names of some of the employees who according to her are employed by the Party II after she was confirmed in her service. Smt. Bhat who is examined on behalf of Party II denied in her evidence that there is such employment in category of the clerks. The Hon'ble High Court of Rajasthan (Jaipur Beach) held in case of *Ram Gopal Saini v/s the Judge, Labour Court No. 2, Jaipur and others, reported in 2001 (89) FLR 778* that mere mentioning the names of the junior persons who were alleged to be appointed after retrenchment of the appellant does not serve the purpose. In this reported case, the appellant did not succeed in proving that the respondent violation provisions of Sections 25 H and 25 G by way of any documentary evidence before the Labour Court which was to be proved by the appellant.

18. The Party II herein also did not produce documentary evidence to prove that the said employees are appointed by the Party II and that too in the category of clerks after she was confirmed in the service. She did not disclose name of the workman who was the last person to be employed in that category. In absence of such clinching and cogent evidence it will not be correct to come to conclusion that the Party II has

violated the provisions of Section 25 G of the said Act, 1947.

19. Termination of service of the Party II is of simplicitor in nature. Same is based on the ground that her service is found surplus in category of the clerks. There was no question of issuing show cause notice for holding inquiry against her before terminating her service. Therefore, and since the termination of the service of the Party I is not proved to be in violation of provisions contained in Sections 25 F and 25 G of the said Act, 1947 termination of service of the Party I cannot be held to be illegal and unjustified. In view of this reason and above discussion, I do not accept case made out by the Party I. My answer to the issues is in negative.

20. *Issue No. 3*: If the Labour Court, Industrial Tribunal or National Tribunal as the case, may be is satisfied that the order of discharge or dismissal was not justified, then and then only it may by its award set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit as provided under Section 11 A of the said Act, 1947. In the present case, I am satisfied that termination of service of the Party I is legal and justified. I, therefore, hold that, the Party I is not entitled to any of the reliefs claimed by her. I answer the issue in negative.

As a result of findings given to issues No. 1 to 3, I proceed to adjudicate the dispute by passing order as follows:

ORDER

1. The action of the management of M/s. Govind Poy Oxygen Limited, Margao, Goa, in terminating the services of Smt. Navneet Mapari, Clerk, w.e.f. 1-1-2001 is legal and justified ?
2. Smt. Navneet Mapari/Party I is not entitled to any of the reliefs claimed by her.
3. No order as to costs.
4. The Award be submitted to the Government of Goa as per provision contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
(Dilip K. Gaikwad),
Presiding Officer,
Industrial Tribunal-Cum-
-Labour Court-I.

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